

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

MAY 18, 2004

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, May 18, 2004 at 8:30 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting called to order at 8:30 a.m. by Chairman Arthur Slattery

Present: Commissioners Arthur Slattery, Robert Stephen, Pauline Ikawa, Barbara Heath, Nancy LeRoy, Executive Director Beth Emmons, and Investigator Ann Flanagan.

- I. The Commission tabled the approval of the April 20, 2004 Commission Minutes due to the lack of a quorum of Commission members present. The April Commission Minutes will be presented for approval at the June 15, 2004 Commission meeting.

II. APPOINTMENTS

8:30 a.m. - Equivalency Interviews - None

9:08 a.m. - KEITH HASKELL appeared before the Commission to explain a previous legal incident prior to applying for his salesperson's license. After review and discussion, and on motion by Commissioner Stephen, seconded by Commissioner Heath, the Commission decided to allow Mr. Haskell to apply for a salesperson's license, based on the fact that Mr. Haskell has had no additional convictions and sufficient evidence of Mr. Haskell's rehabilitation was provided from his counselor.

RICHARD EXLINE appeared before the Commission to explain a previous legal incident prior to applying for a salesperson's license. After review and discussion, and on motion by Commissioner LeRoy, seconded by Commissioner Heath, the Commission decided to allow Mr. Exline to apply for a salesperson's license, based on the fact that Mr. Exline has had no other convictions since his incident in 1992, and prior to licensure, the Commission must receive a letter from Mr. Exline's principal broker informing the Commission that he or she is aware of Mr. Exline's prior conviction.

III. DISCUSSION

APPROVED STUDY FOR BROKER APPLICANTS – The Commission reviewed its decision on the credit given for the 40 hour pre-licensing course towards the 60 hour educational requirement for a broker's license. At the April 20, 2004 Commission meeting, the Commission decided that a salesperson applicant who fulfills their 40 hour education requirement with a 40 hour pre-licensing course, could use that same course at a later date to fulfill the 60 hour requirement for a broker's license. After review and discussion, and on motion by Commissioner Heath, seconded by Commissioner LeRoy, the Commission decided to change its previous decision to not allow an applicant for a broker's license to use the same 40 hour pre-licensing course submitted to satisfy the

40 hour education requirement for a salesperson's license. A broker applicant may, however take an additional 40 hour pre-licensing course to satisfy the 60 hour broker education requirement. The Commission also decided that no more than one 3 hour core continuing education course can be used to fulfill the 60 hour broker education requirement.

MANAGING BROKERS FOR FIRM BRANCH OFFICES- The Commission discussed its concern that there have been reports of branch offices that may be operating without a managing broker appointed to the office. A managing broker must be designated by a principal broker for each branch office opened, and all branch offices shall be supervised on site by the managing broker, pursuant to RSA 331-A:16, I and II. The Commission directed the Executive Director to research this issue, to ensure that all branch offices are operating with a designated managing broker on site at each branch office.

ALPINE VILLAGE PROPERTIES, INC. submitted a request for clarification regarding accounting of information and providing tenant identities to past landlord clients. Alpine Village Properties solicits and places short term rentals for homeowners of units who contract with the company to market their properties. The homeowners pay Alpine Village Properties a commission for their services. All of the short term tenants contract with Alpine Village Properties and not with the individual owner. After review and discussion, the Commission decided that Alpine Village Properties' fiduciary responsibility is with the homeowner, as a principal/agent relationship, and that Alpine Village Properties has an obligation to provide the homeowner with lists of previous tenants at their request. The Commission suggests that Alpine Village Properties refer this matter to their legal counsel as well.

FILE NO. 2003-03-04 – The Respondent's Attorney submitted a proposed Settlement Agreement on Complaint File No. 2003-03-04. After review and discussion, the Commission rejected the Settlement Agreement. The Commission upheld its original decision to hold a hearing on the matter.

FILE NO. 2004-003 – The Complainants of Complaint File No. 2004-003 submitted a request to withdraw their complaint based on the resolution of the parties differences. After review and discussion, the Commission unanimously approved the request for withdrawal. The parties to the complaint to be notified.

FILE NO. 2003-02-09 – The Complainant of Complaint File No. 2003-02-09 submitted a request to withdraw their complaint based on the resolution of the parties differences. After review and discussion, the Commission unanimously approved the request for withdrawal. The parties to the complaint to be notified.

FILE NO. 2002-04-05 – The Complainant of Complaint File No. 2002-04-05 submitted a request to withdraw their complaint based on the resolution of the parties differences. After review and

discussion, the Commission unanimously approved the request for withdrawal. The parties to the complaint to be notified.

SECONDARY EDUCATION PROVIDERS OF DISTANCE EDUCATION COURSES- Fran West, the Education Program Assistant for the Commission requested a clarification from the Commission as to whether an instructor, who is a secondary provider of courses offered through distance education methods, needed to submit information and a fee for accreditation as a separate course apart from the primary provider's submittal for accreditation. After review and discussion, the Commission decided to continue to require secondary providers to submit the course information and fee in addition to the submittal of the course and fee by the primary provider.

BROKER LICENSING EDUCATION – Fran West, the Education Program Assistant for the Commission presented a 10 hour pre-licensing broker education course which was submitted to the Commission for accreditation for 10 credit hours. After review and discussion, the Commission decided to approve the 10 hour pre-licensing broker education course to be used toward the 60 hour broker educational requirement, pursuant to Rea 301.03(k).

IV. **OTHER BUSINESS**

1. Tuesday, June 15, 2004, was unanimously approved as the date for the next regular meeting.

2. CASE EVALUATIONS

(a) **FILE NO. 2003-02-09**

Evaluator: Commissioner Ikawa

Determination: Should be heard. In the alternative, the Commission unanimously decided to offer the Respondent a Settlement Agreement with a disciplinary fine in the amount of \$2,000.00 and require completion of an Commission accredited 40 hour pre-licensing course.

(b) **FILE NO. 2003-08-01**

Evaluator: Commissioner Slattery

Determination: Should be heard.

(c) **FILE NO. 2003-12-04**

Evaluator: Commissioner LeRoy

Determination: No violation, should not be heard.

(d) **FILE NO. 2004-004**

Evaluator: Commissioner Slattery

Determination: Should be heard. In the alternative, the Commission unanimously decided to offer the Respondent a Settlement Agreement with a disciplinary fine in the amount of \$100.00.

3. ORDER

The following Order was issued by the Commission and becomes part of the official Minutes of this meeting.

FILE NO. 2003-02-01 PAUL & CINDY TAYLOR VS AARON BROWN

V. **HEARING 9:58 AM**

FILE NO 2003-06-02 KATHLEEN AND HALTON GRINDLE VS CYNTHIA MICHIE

Evaluator: Commissioner LeRoy

The following persons were present at the hearing:

Commission: Commissioners Robert Stephen, Arthur Slattery, Pauline Ikawa, Barbara Heath, Executive Director Beth Emmons, and Investigator Ann Flanagan

Stenographer: Harry McKenna

Nolin, McKenna and Duffy
Reporting Associates
P.O. Box 1658
Dover, NH 03821

Evaluator: Commission LeRoy evaluated the above matter and abstained from participation in the discussion and resulting decision.

Complainants: Kathleen & Halton Grindle

89 Ledge Drive
Plainfield, NH 03781

Attorney: Pro Se

Witnesses: Christopher & Montana Leister
Paul Messer

Respondent: Cynthia Mitchie

Diversified Realty
130 Johnson Hill Road
P.O. Box 237
Bradford, NH 03221

Attorney: Pro Se

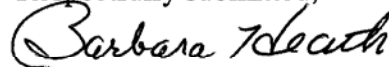
Witnesses: None

Decision: Pending – subject to review of transcripts and exhibits.

VI. **ADJOURNMENT**

Motion by Commissioner Ikawa, seconded by Commissioner Stephen to adjourn the meeting. Chairman Slattery adjourned the meeting at 12:50 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Barbara Heath".

Barbara Heath
Clerk

PAUL & CINDY TAYLOR
VS
AARON BROWN
(ATRIO PROPERTIES)

FILE NO. 2003-02-01

This matter comes before the Real Estate Commission on the complaint of Paul & Cindy Taylor, alleging violations of NH RSA 331-A:25-d; NH RSA 331-A: 26 XII, XXVIII, XXIX, XXXVII by Aaron Brown. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Aaron Brown (hereinafter referred to as Respondent) was licensed as a New Hampshire real estate salesperson on 02/01/94, and was so licensed at the time of the alleged violations. Respondent is the owner of Atrio Properties.
2. Cindy & Paul Taylor (hereinafter referred to as Complainants) purchased a new construction property located in Portsmouth NH listed by Respondent, and at the same time sold their property located in Greenland NH with Respondent as their listing agent to a buyer-client of another agent of Atrio Properties.
3. Complainants allege that the signatures on the dual agency form for the Greenland NH transaction were forgeries of their signatures.
4. Eileen M. Page testified that she is a questioned document examiner handwriting consultant employed by Complaints (Tr. p. 16, lines 13-18).

5. Eileen Page testified that the alleged forgery of Cindy Taylor's signature contained 4 similarities and 14 dissimilarities to Cindy Taylor's actual signature, and that the alleged forgery of Paul Taylor's signature contained 1 similarity and 16 dissimilarities to Paul Taylor's actual signature, both of which outweighed the threshold level (Tr. p. 40, lines 11-15).

6. Eileen Page testified that there was a "high probability" that Paul Taylor did not sign the dual agency form (Tr. p. 31, lines 10-11).

7. Complainant Paul Taylor testified that he signed the purchase & sales agreement which indicated that Atrio Properties represented the seller and Atrio Properties represented the buyer, but he testified that he did not sign the dual agency form (Tr. p. 59, lines 9-22).

8. Complainant Cindy Taylor testified that she did not know who signed the dual agency form, but that neither she nor her husband signed it (Tr. p. 71, lines 1-4).

9. Respondent testified that he did not sign the dual agency form (Tr. 115, lines 10-12).


10. Respondent testified that he inquired of his entire office and no one indicated that they signed the document (Tr. p. 103, lines 1-3).

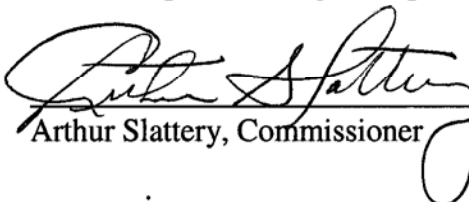
11. Respondent testified that his office could have done a better job explaining the dual agency situation to Complainants (Tr. p. 101, lines 4-17).


Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

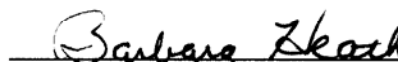
The Commission is not entirely convinced that signature forgeries actually occurred (Tr. p. 124, lines 2-5). Cindy Taylor's known signatures contained so many variations that it is possible that she signed the form (Tr. p. 123, lines 1-8). However, even if the signatures were indeed forged, there is no testimony or evidence indicating that Respondent committed the alleged forgeries. Therefore, the Commission rules that Respondent did not violate any of the aforementioned statutes.

Commissioner Nancy LeRoy evaluated this case and did not take part in the hearing or decision.

 5/18/04
Robert Stephen, Acting Chairperson DATE

 4/20/04
Arthur Slattery, Commissioner DATE

 4/20/04
Pauline Ikawa, Commissioner DATE

 5/18/04
Barbara Heath, Commissioner DATE